

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HELEN D. BROWN,

§

Plaintiff,

§

v.

CIVIL ACTION H-19-946

THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE CERTIFICATEHOLDERS
OF CWABS INC., ASSET-BACKED
CERTIFICATES, SERIES 2007-BC1, AND
BAYVIEW LOAN SERVICING, LLC,

§

Defendants.

ORDER

Pending before the court is the defendants' motion for summary judgment. Dkt. 21.

Although defendants served plaintiff via certified mail return receipt requested (*see* Dkt. 21 at 13), more than a week has passed since the response deadline and Plaintiff has not responded. Having reviewed the motion, the evidentiary record, and the applicable law, the court **GRANTS** defendants' motion for summary judgment.

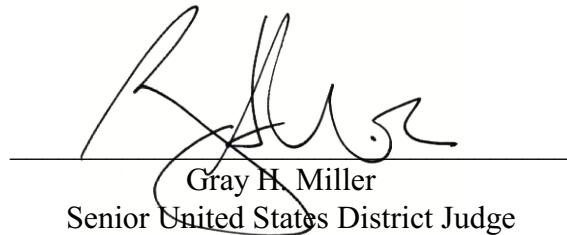
According to the local rules, a failure to timely respond to a pending motion "will be taken as a representation of no opposition." S.D. Tex. L.R. 7.4. Nevertheless, a "motion for summary judgment cannot be granted simply because there is no opposition, even if failure to oppose violated a local rule." *Hetzell v. Bethlehem Steel Corp.*, 50 F.3d 360, 362 n.3 (5th Cir. 1995) (citing *Hibernia Nat'l Bank v. Admin. Cent. Sociedad Anonima*, 776 F.2d 1277, 1279 (5th Cir. 1985)). Defendants still have "the burden of establishing the absence of a genuine issue of material fact and, unless [they] ha[ve] done so, the court may not grant the motion, regardless of whether any response was filed." *See Hetzell*, 50 F.3d at 362 n.3. However, a district court may accept as undisputed the facts

set forth in the motion. *See Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir. 1988) (internal citations omitted).

The court has examined the record and applicable law and is satisfied that, for the reasons set forth in defendants' motion for summary judgment, no genuine issue of material fact exists. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L. Ed. 2d 265 (1986); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (*en banc*).

Accordingly, defendants' motion for summary judgment (Dkt. 21) is GRANTED.

Signed at Houston, Texas on January 10, 2020.



Gray H. Miller
Senior United States District Judge